IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.REVN.APPLN.NO.245 OF 1998

Hiralal Gangaram Surana ..Applicant

Vs.

Pannalal Motilal Surana
and Ors. ..Respondents

...

Mr.D.S.Sawant advocate for applicant
Mr.S.S.Pednekar A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 04, 2007

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State. None appears for the Respondent-original accused though served.

2. Being aggrieved by the judgment and order of acquittal dated 10.9.1998 passed by the IInd Jt. Judicial Magistrate F.C. Nasik in Summary Case No.192 of 1999, this revision has been filed by the original complainant. By the said judgment and order, the learned Magistrate acquitted the respondents-accused nos.1 to 4 for the offence

under Sections 323, 341 r.w. 34 of IPC.

3. I have perused the said judgment. It is seen that the applicant-original complainant and Respondent No.1 Pannalal are real brothers. There was some dispute in respect of three rooms situated on 3rd floor. It is the case of the complainant that he came into possession of the said rooms on account of the rooms being surrendered by the tenants. It is the further case of the complainant that on 19.12.1990 accused no.1 put lock on the said three rooms which were in possession of the complainant. The said act was resisted by the wife Suvarna (P.W.2) and daughter Malati (P.W.3) of the complainant, therefore the accused assaulted and abused them.

4. As far as the said three rooms were concerned, it is an admitted fact that accused no.1/respondent no.1 and the complainant were having right, title and interest in respect of the said ancestral property. The prosecution has not proved that the complainant was in exclusive possession of the said rooms. There is no evidence to show that the complainant was in possession of the rooms in

question since 1985.

5. As far as the aspect of locking of the room is concerned, it is clear that at the time of panchnama, there was no lock to the rooms. There is no evidence to show that accused no.1 had put a lock on the rooms or that rooms in question were locked at the instance of accused no.1. The rooms in question were open and there was no lock to the said rooms. In such case, the learned Magistrate has rightly held that it cannot be said that accused no.1 has unauthorisedly put lock on the said rooms.

6. As far as assault and giving of abuses by the accused is concerned, P.W.2 Malati and P.W.3 Suvarna are interested witnesses. It is the prosecution case that at the relevant time and place, an independent witness P.W.7 Mahesh was also present who had come there as he wanted to take the said rooms on rent. P.W.2 Malati has spoken about the accused assaulting her and abusing her but the learned Magistrate has rightly observed that none of the witnesses have stated what were the specific abuses given by the accused to her. In fact, the

evidence of P.W.4 Kishor Puranik is totally silent as far as abuses as well as assault is concerned. He is also an independent witness. So also P.W.7 Mahesh who is an independent witness, is totally silent on the point of assault to the complainant. P.W.3 has not supported the theory of giving abuses by the accused. Thus, as far as giving of abuses and assault is concerned, the learned Magistrate has rightly observed that the evidence is not cogent and consistent. Thus, the learned Magistrate has rightly held that the prosecution has failed to prove the said offences beyond reasonable doubt. In this view of the matter, there is no illegality, impropriety or irregularity in the order of the learned Magistrate. The said judgment and order does not call for interference.

7. Revision is disposed of. Rule is discharged.

[Smt.V.K.Tahilramani, J.]